

Tuesday, February 26, 2013

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 11:10 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Richard B. Pallack, 527752
1993, \$47,373.00 Assessment
For Appellant:

Richard B. Pallack, Taxpayer
Ronald Lynn, Representative
Kristen Kane, Tax Counsel
Bill Hilson, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Franchise Tax Board (FTB or Respondent) issued the Notice of Proposed Assessment (NPA) in a timely matter.

Whether Treasury Regulation section 301.9100-3(a) can operate to extend the time period in which appellant could file his disaster loss carryback claim under Revenue and Taxation Code (R&TC) section 17207, subdivision (g).

If Treasury Regulation section 301.9100-3(a) can operate to extend the time period in which appellant could have filed his disaster loss carryback claim under R&TC section 17207, subdivision (g), has appellant shown that he comes within the provisions of Treasury Regulation section 301.9100-3(a).

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 2.1](#))

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

The Board recessed at 12:04 p.m. and reconvened at 1:24 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

PUBLIC COMMENT

Speaker: John Francis Kelly, Owner, *Kelly's Tux Shop*, and California Resident

At Ms. Yee's request, the Board directed staff to present the Federation of Tax Administrators (FTA) Tobacco Section Resolution to expand the Prevent All Cigarette Trafficking (PACT) Act to include cigars and pipe tobacco, at the next Board meeting in Sacramento.

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CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Brian D. Adler and Cheryl Adler, 601347

2005, \$63,795.00 Tax, \$12,759.00 Accuracy-Related Penalty

For Appellants:

Brian D. Adler, Taxpayer

Jonathan A. Brod, Attorney

For Franchise Tax Board:

Raul Escatel, Tax Counsel

Bill Hilson, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellants have shown error in respondent's denial of claimed deductions and expenses.

Whether appellants have established a basis for abatement of the accuracy-related penalty.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 2.2](#))

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Alfred M. Humphries and Jill Humphries, 598220

2010, \$2,306.42 Claim for Refund

For Appellants:

Alfred Humphries, Taxpayer

For Franchise Tax Board:

Eric Yadao, Tax Counsel

Karen Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants have established reasonable cause to abate the mandatory electronic payment penalty.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Antonio Gallo, 595225

2001, \$3,430.00 Tax, \$286.74 Post-Amnesty Penalty

For Appellant:

Antonio Gallo, Taxpayer

Kelly Ballester, Representative

For Franchise Tax Board:

Eric Yadao, Tax Counsel

Karen Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has established error in respondent's proposed assessment which was based on a federal assessment.

Whether appellant is entitled to interest abatement.

Whether the Board has jurisdiction to review the proposed post-amnesty penalty.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

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Richard A. Hall, 533898
2003, \$157,185.00 Assessment
For Appellant:
For Franchise Tax Board:

A. Lavar Taylor, Attorney
Leah Thyberg, Tax Counsel
Michael Cornez, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has established that a \$1,476,000 distribution to appellant from appellant's partnership was a bona fide loan.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Gabriel Rufus and Shirley Rufus, 599989
2006, \$24,120.00 Tax, \$4,824.00 Accuracy-Related Penalty

For Appellants:

Gabriel Rufus, Taxpayer
Gary Slavett, Attorney
Sonia Deshmukh, Tax Counsel
Michael Cornez, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellants have established error in the Franchise Tax Board's (FTB or respondent) assessment, which is based on a federal audit adjustment.

Whether the accuracy-related penalty should be abated.

Anthony Epolite, Tax Counsel IV, Appeals Division, Legal Department, stated for the record that the Franchise Tax Board conceded to an additional \$7,728 Mortgage Interest Deduction.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

The Board recessed at 4:32 p.m. and reconvened at 4:46 p.m. with Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel present.

Cornelis A. Van Diepen, 560406
2006, \$1,705.00 Tax, \$426.25 Late Filing Penalty

For Appellant:

Cornelis Van Diepen, Taxpayer
Eric Yadao, Tax Counsel
Karen Smith, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has demonstrated error in the underlying tax assessment.

Whether appellant has shown reasonable cause for abatement of the late filing penalty.

Whether a frivolous appeal penalty should be imposed.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel absent, the Board submitted the appeal for decision.

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PUBLIC HEARINGS**Property Taxes – State Assesseees’ Presentations on Capitalization Rates and Other Factors Affecting Values**

Ken Thompson, Chief, State Assessed Properties Division, Property and Special Taxes Department, made introductory remarks regarding 1) the state assesseees’ presentation on capitalization rates and other factors and procedures affecting 2013/14 property values of California public utilities, railroads, and pipelines; and, 2) private railroad car assesseees’ presentations on factors and procedures affecting 2013/14 taxable values of private railroad cars.

Speaker: Peter W. Michaels, Law Offices of Peter Michaels

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Rafael Eduardo Delgado and Alexander Orantes, 549061 (AC)*; *Bar Codes Unlimited, Inc., 523577 (FH)*; and, *Antique Portraiture, Inc., 532576 (AA)*.

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel absent, the Board made the following orders:

Charles W. Stevens, Jr., 484491, 605459 (EA)

10-1-99 to 3-31-02, \$1,931.38 Tax, \$193.14 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

Gary David Becker, 496519 (UT)

1-14-04, \$47,447.36 Tax, \$4,785.00 Failure-to-File Penalty, \$4,785.00 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

True Care Medical Supply, 539343 (AA)

4-1-07 to 7-31-09, \$21,716.26 Tax, \$1,386.19 Negligence Penalty, \$785.43 Failure-to-File Penalty

Action: Redetermine as recommended by the Appeals Division.

Rafael Eduardo Delgado and Alexander Orantes, 549061 (AC)

Action: The Board took no action.

Bar Codes Unlimited, Inc., 523577 (FH)

Action: The Board took no action.

Rechem International, Inc., 433605 (AP)

7-1-03 to 6-30-06, \$4,744.59 Tax

Q.S.M. Enterprise, Inc., 433709 (AP)

10-1-03 to 9-30-06, \$69,945.78 Tax

Action: Redetermine as recommended by the Appeals Division.

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Gustavo De La Rosa, 486211 (AA)

1-1-05 to 3-31-07, \$373,972.13 Tax, \$37,397.19 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Paoli's Italian Kitchen, Inc., 381891 (AC)

1-1-03 to 12-31-05, \$126,325.99 Tax, \$31,581.53 Fraud Penalty

Action: Redetermine as recommended by the Appeals Division.

Techniform Metal Curving, Inc., 529775 (EH)

7-1-06 to 9-30-09, \$157,179.63 Tax, \$161.78 Failure-to-File Penalty

Action: Redetermine as recommended by the Appeals Division.

Platinum Boat Works, Inc., 491247 (UT)

12-19-06, \$38,813.00 Tax, \$3,881.30 Failure-to-File Penalty

Action: Redetermine as recommended by the Appeals Division.

Scenario Design, Inc., 533881 (AA)

7-1-05 to 12-31-08, \$315,448.25 Tax

Action: Redetermine as recommended by the Appeals Division.

Hien Thu Tran, 525183 (EA)

10-1-8 to 9-30-09, \$21,456.00 Tax, \$2,145.60 Failure-to-File Penalty

Action: Redetermine as recommended by the Appeals Division.

Juan O. Martinez, 556412 (EA)

4-1-06 to 12-31-09, \$12,609.55 Tax, \$1,260.96 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

Lori A. Lewandowski and David Anthony Lewandowski, 550177 (AR)

10-1-06 to 6-30-09, \$2,708.31 Tax, \$2,566.18 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Antique Portraiture, Inc., 532576 (AA)

Action: The Board took no action.

Daebak Investment, Inc., 556493 (AA)

5-2-05 to 11-26-07, \$43,949.91 Tax, \$4,394.99 Finality Penalty, \$84.33 Failure to Make Timely Payment

Action: Redetermine as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel absent, the Board made the following orders:

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James W. Fletcher and Lisa M. Fletcher, 604801

2003, \$30,175.00 Tax

2005, \$269.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Jerome James, 596166

2003, \$307,322.00 Assessment

2004, \$80,008.00 Assessment

Action: Modify the action of the Franchise Tax Board.

James Cline and Vera Cline, 578466

2005, \$7,751.00 Tax

Action: Modify the action as conceded by the Franchise Tax Board.

Michael D. Hellman and Kara M. Munro Hellman, 588781

2007, \$6,234.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Gordon R. Kindschi, 594033

2002, \$343.75 Claim for Refund

2003, \$815.75 Claim for Refund

2004, \$366.00 Claim for Refund

2005, \$444.75 Claim for Refund

2006, \$729.25 Claim for Refund

2007, \$335.50 Claim for Refund

2008, \$34.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Richard Krulik, 561672

2008, \$6,238.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Khosrow J. Motamedi, 592901

2007, \$5,789.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Nextgen Web, LLC, 578135

1999-2008, \$15,028.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Keith Ponthieux, 572392

2008, \$2,898.00 Tax, \$724.50 Late Filing Penalty, \$724.50 Notice and Demand Penalty, \$100.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and imposed a \$5,000.00 frivolous appeal penalty.

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Priscilla Rodriguez, 589179

2008, \$422.00 Tax

Action: Modify the action of the Franchise Tax Board.

Rogelio Rodriguez, 586119

2007, \$354.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

William Tauchar, 573100

2004, \$26,052.00 Tax, \$2,971.69 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

Trim-Tex, Inc., 536303

2007, \$14,702.78 Tax, \$3,675.69 Demand Penalty, \$2,000.00 Nonqualified Corporation Penalty, \$3,675.69 Late Filing Penalty, \$188.00 Filing Enforcement Fee

Action: Modify the action of the Franchise Tax Board.

Christian W. Wilbert and Estate of Ilsa Wilbert (Deceased), 597671

2007, \$2,224.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

SALES AND USE TAX MATTERS, REDETERMINATIONS, DENIALS OF CLAIMS FOR REFUND AND GRANT-ONE DAY INTEREST RELIEF, CONSENT

With respect to the Sales and Use Tax Matters, Redeterminations, Denials of Claims for Refund and Grant-One Day Interest Relief, Consent Agenda, upon a single motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *ASML US, Inc.*, 675635; Ms. Steel absent, the Board made the following orders:

Stephen J. Hansen, 486259 (UT)

9-25-01 to 9-25-01, \$197,149.26

Action: Approve the redetermination as recommended by staff.

Timothy Allen Prero, 487585 (UT)

9-25-01 to 9-25-01, \$197,149.26

Action: Approve the redetermination as recommended by staff.

Scott Michael Kmety, 624828 (FH)

4-1-06 to 3-31-09, \$151,999.10

Action: Approve the redetermination as recommended by staff.

Rincon Industries, Inc., 604031 (GH)

7-1-08 to 9-30-08, \$586,874.02

Action: Approve the redetermination as recommended by staff.

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GMRI, Inc., 625632 (OH)

1-1-02 to 12-31-04, \$133,065.05

Action: Approve the denial of claim for refund as recommended by staff.

GMRI, Inc., 624783 (OH)

1-1-02 to 12-31-04, \$271,517.26

Action: Approve the denial of claim for refund as recommended by staff.

PA Acquisition Corp., 675647 (OH)

5-1-12 to 6-15-12

Action: Approve grant-one day interest relief as recommended by staff.

Aeropostale West, Inc., 675630 (OH)

11-1-11 to 11-30-11

Action: Approve grant-one day interest relief as recommended by staff.

Granite Construction Company, 675643 (GH)

4-1-12 to 6-30-12

Action: Approve grant-one day interest relief as recommended by staff.

Trader Joe's Company, 668950 (AP)

7-1-11 to 9-30-11

Action: Approve grant-one day interest relief as recommended by staff.

Arthur Koroyan, 675633 (DF)

4-1-12 to 4-30-12

Action: Approve grant-one day interest relief as recommended by staff.

Party City Corporation, 675651 (OH)

5-1-12 to 6-15-12

Action: Approve grant-one day interest relief as recommended by staff.

ASML US, Inc., 675635 (OH)

5-1-12 to 7-31-12

Action: Approve grant-one day interest relief as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Process Instruments & Controls, LLC, 675653 (DF)

4-1-12 to 6-30-12

Action: Approve grant-one day interest relief as recommended by staff.

Hyphenet, Inc., 675645 (FH)

1-1-12 to 4-30-12

Action: Approve grant-one day interest relief as recommended by staff.

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Brocca, Inc., 675637 (CH)

4-1-12 to 6-30-12

Action: Approve grant-one day interest relief as recommended by staff.

PA Acquisition Corp., 675649 (OH)

5-1-12 to 6-15-12

Action: Approve grant-one day interest relief as recommended by staff.

G E K Enterprises, LLC, 675640 (FH)

4-1-12 to 6-30-12

Action: Approve grant-one day interest relief as recommended by staff.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Seagate Technology, LLC, 558351*; Ms. Steel absent, the Board made the following orders:

Corjen, Inc., 665547 (FH)

4-1-09 to 6-30-09, \$114,162.75

Action: Approve the credit and cancellation as recommended by staff.

LBS Financial Credit Union, 611754 (EA)

1-1-12 to 6-30-12, \$114,131.00

Action: Approve the refund as recommended by staff.

Rusnak/Pasadena, 570832 (AP)

1-1-08 to 12-31-11, \$206,063.79

Action: Approve the refund as recommended by staff.

Rusnak/Westlake, 570835 (AR)

1-1-08 to 12-31-11, \$167,324.94

Action: Approve the refund as recommended by staff.

Calportland Company, 601367 (AP)

10-1-05 to 12-31-08, \$101,485.97

Action: Approve the refund as recommended by staff.

AMVETS Dept. – California Service Foundation, 605543 (FH)

10-1-10 to 9-30-11, \$123,676.00

Action: Approve the refund as recommended by staff.

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Newport Corporation, 675510 (EA)

1-1-07 to 12-31-09, \$174,216.29

Action: Approve the refund as recommended by staff.

Magnuson Corporation, 612118 (OH)

4-1-09 to 3-31-12, \$150,286.00

Action: Approve the refund as recommended by staff.

Coxcom, Inc., 607817 (OH)

4-1-08 to 12-31-10, \$1,353,573.47

Action: Approve the refund as recommended by staff.

Paradise Valley Hospital, 531178 (FH)

1-1-07 to 3-31-07, \$590,660.22

Action: Approve the refund as recommended by staff.

Stanford University Hospital, 570549 (GH)

1-1-08 to 6-30-11, \$1,731,564.84

Action: Approve the refund as recommended by staff.

Inter-State Oil Co., Inc., 626166 (KH)

4-1-12 to 6-30-12, \$155,129.00

Action: Approve the refund as recommended by staff.

Regents of the University of California, 560151 (JH)

10-1-07 to 12-31-10, \$228,893.49

Action: Approve the refund as recommended by staff.

VW Credit, Inc., 531401 (OH)

1-1-07 to 9-30-10, \$3,827,820.33

Action: Approve the refund as recommended by staff.

Zenith Insurance Company, 531324 (AC)

1-1-07 to 12-31-10, \$181,495.10

Action: Approve the refund as recommended by staff.

Chrysler, LLC, 649566 (OH)

6-17-11 to 9-17-12, \$818,812.47

Action: Approve the refund as recommended by staff.

Lacerte Software Corporation, 600132 (OH)

4-1-11 to 12-31-11, \$1,406,053.50

Action: Approve the refund as recommended by staff.

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PNC Equipment Finance, LLC, 605538 (OH)

1-1-11 to 3-31-11, \$130,734.00

Action: Approve the refund as recommended by staff.

Seagate Technology, LLC, 558351 (GH)

7-1-07 to 6-30-10, \$1,748,873.59

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

EV Group, Inc., 613813 (OH)

7-1-11 to 9-30-11, \$160,840.00

Action: Approve the refund as recommended by staff.

J.C. Penney Company, Inc., 605403 (OH)

7-1-06 to 12-31-09, \$663,035.11

Action: Approve the refund as recommended by staff.

Teradyne, Inc., 654998 (OH)

7-1-09 to 12-31-09, \$567,707.91

Action: Approve the refund as recommended by staff.

Arrowhead Central Credit Union, 623749 (EH)

1-1-12 to 9-30-12, \$250,199.00

Action: Approve the refund as recommended by staff.

SchoolsFirst Federal Credit Union, 611719 (EA)

1-1-10 to 6-30-12, \$306,111.00

Action: Approve the refund as recommended by staff.

Americredit Financial Service, Inc., 633034 (OH)

4-1-12 to 6-30-12, \$234,457.00

Action: Approve the refund as recommended by staff.

Lobel Financial Corporation, 632989 (EA)

4-1-12 to 6-30-12, \$198,347.00

Action: Approve the refund as recommended by staff.

A-L Financial Corp., 609082 (EA)

1-1-12 to 9-30-12, \$262,948.00

Action: Approve the refund as recommended by staff.

Valencia B. Imports, Inc., 552837 (AR)

7-1-07 to 3-31-11, \$147,905.58

Action: Approve the refund as recommended by staff.

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Pacific Biosciences of California, Inc., 566549 (BH)

1-1-09 to 8-31-09, \$123,413.63

Action: Approve the refund as recommended by staff.

Harley-Davidson Credit Corp., 611790 (OH)

1-1-12 to 6-30-12, \$204,370.00

Action: Approve the refund as recommended by staff.

New Albertsons, Inc., 559118 (OH)

6-2-06 to 6-30-09, \$1,974,972.73

Action: Approve the refund as recommended by staff.

Quality Financial, Inc., 549125 (AC)

7-1-09 to 3-31-10, \$153,777.92

Action: Approve the refund as recommended by staff.

Pacific Biosciences of California, Inc., 651376 (BH)

9-1-09 to 12-31-10, \$277,454.22

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, RELIEF OF PENALTIES, CONSENT

With respect to the Special Taxes Matters, Relief of Penalties, Consent Agenda, upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Ms. Steel absent, the Board made the following order:

Tesoro Refining and Marketing Co., 682019 (STF)

9-1-11 to 9-30-11, \$267,925.28

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9

LEGAL APPEALS MATTERS, ADJUDICATORY

East Coast Foods, Inc., 444779 (AS)

Speaker: Sam L. White, Clifton Capitol Group

7-1-01 to 6-30-05, \$1,349,989.74 Tax, \$134,999.02 Negligence Penalty, \$46,060.60 Amnesty Double Negligence Penalty, \$52,564.30 Amnesty Interest Penalty

Considered by the Board: April 26, 2012

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel absent, the Board ordered that the matter be submitted for decision to the next day.

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**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS,
ADJUDICATORY**

Jimmy A. Prince, 535124

1997, \$1,854.00 Tax, \$2,156.76 Penalties

1998, \$20,539.00 Tax, \$15,215.20 Penalties

1999, \$13,986.00 Tax, \$9,307.51 Penalties

Considered by the Board: March 22, 2011

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel absent, the Board adopted a decision sustaining the modified action of the Franchise Tax Board.

**TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION
DISCLOSURE STATUTE****OFFER-IN-COMPROMISE RECOMMENDATIONS**

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel absent, the Board approved the Offer in Compromise Recommendations of *DMZ Wireless, Inc.*; *Kimberly Michele Manko*; and, *Esmail Sorkhpoosh*; as recommended by staff.

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

The Board deferred consideration of the following matter to February 28, 2013 for separate discussion: *2013/14 Excise Tax Rate Setting (Fuel Tax Swap)*.

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel absent, the Board made the following orders:

Action: Adopt 2013/14 diesel fuel tax rate for interstate users component b as recommended by staff ([Exhibit 2.3](#)).

Action: Adopt prepayment rate for sales tax on motor vehicle fuel, diesel fuel and jet fuel as recommended by staff ([Exhibit 2.4](#)).

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS**Legislative Committee—January 15, 2013**

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel absent, the Board approved the Legislative Committee report and the actions therein ([Exhibit 2.5](#)).

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Business Taxes Committee—January 15, 2013

Action: Upon motion of Mr. Runner, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel absent, the Board approved the Business Taxes Committee report and the actions therein ([Exhibit 2.6](#)).

OTHER ADMINISTRATIVE MATTERS**Executive Director's Report**

Cynthia Bridges, Executive Director, made introductory remarks requesting approval of nominees for the BOE Employee Recognition Award Program.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel absent, the Board approved the BOE Employee Recognition Award Program nominees ([Exhibit 2.7](#)).

Eric Steen, CROS Project Director, provided a report regarding the progress on the CROS project to replace BOE's two current tax legacy technology systems.

Todd Gilman, Taxpayer Rights Advocate, Taxpayers' Rights Advocate Office, presented the Annual Report highlighting Taxpayers' Rights Advocate Office accomplishments, involvement in projects, current issues, and examples of services provided ([Exhibit 2.8](#)).

At Mr. Runner's request, the Board directed staff to provide to the Members the Taxpayers' Rights Advocate's quarterly report that is currently provided to department heads.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 5:29 p.m. and reconvened immediately in closed session with Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 5:32 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel present.

The Board adjourned at 5:33 p.m.

The foregoing minutes are adopted by the Board on September 10, 2013.

Note: The following matters were removed from the calendar prior to the meeting: *Bret A. Curtis and Yecenia M. Curtis, 594236; Daniel R. Marcotte, 589131; and, James J. Martin, 574254.*

Note: These minutes are not final until Board approved.

Wednesday, February 27, 2013

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:35 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARINGS HELD FEBRUARY 26, 2013**

Richard B. Pallack, 527752

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Brian D. Adler and Cheryl Adler, 601347

Final Action: Ms. Yee moved to allow an additional loss of \$525,000 and adjust the accuracy penalty accordingly. Ms. Yee withdrew the motion.

Upon motion of Mr. Runner, seconded by Ms. Steel and duly carried, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel voting no, Mr. Horton abstaining, the Board reversed the action of the Franchise Tax Board.

Alfred M. Humphries and Jill Humphries, 598220

Final Action: Upon motion of Ms. Steel, seconded by Mr. Runner and duly carried, Mr. Horton, Ms. Steel and Mr. Runner voting yes, Ms. Yee and Ms. Mandel voting no, the Board reversed the action of the Franchise Tax Board.

Christopher Lim, 599567

2002, \$655.09 Claim for Refund

Gregory J. Lim and Mya Lim, 599568

2002, \$690.15 Claim for Refund

James E. Lim and Melinda Lim, 599575

2002, \$2,058.99 Claim for Refund

Paul T. Liu and Christiana Liu, 599583

2002, \$635.25 Claim for Refund

For Appellants:

Waived Appearance

For Franchise Tax Board:

Craig Scott, Tax Counsel

Karen Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether an appellant has shown that his/her post-amnesty penalty should be abated.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board denied the appeal for lack of jurisdiction.

Antonio Gallo, 595225

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board. The Board directed staff to inform the taxpayer of payment plan options.

Note: These minutes are not final until Board approved.

Wednesday, February 27, 2013

Richard A. Hall, 533898

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board sustained the action of the Franchise Tax Board.

Gabriel Rufus and Shirley Rufus, 599989

Final Action: Upon motion of Mr. Runner, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board reversed the action of the Franchise Tax Board, and allowed the mortgage interest deduction concession by the Franchise Tax Board.

Cornelis A. Van Diepen, 560406

Final Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and imposed a \$750.00 frivolous appeal penalty.

LEGAL APPEALS MATTERS, ADJUDICATORY

East Coast Foods, Inc., 444779 (AS) (Continued)

7-1-01 to 6-30-05, \$1,349,989.74 Tax, \$134,999.02 Negligence Penalty, \$46,060.60 Amnesty

Double Negligence Penalty, \$52,564.30 Amnesty Interest Penalty

Considered by the Board: April 26, 2012

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Runner, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division and that the matter not be held in abeyance pending the adoption of a summary decision for publication.

SALES AND USE TAX APPEALS HEARINGS

Rafael Wholesale & Distributor, Inc., 530276 (AA)

4-1-06 to 3-31-09, \$9,827.17 Tax

For Petitioner:

Rafael Hasbun, Taxpayer

Laura Hasbun, Taxpayer

Jack P. Chaiyakam, Representative

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether additional adjustments are warranted to the amount of disallowed claimed nontaxable sales for resale.

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 10:59 a.m. and reconvened at 11:12 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Wednesday, February 27, 2013

Benalex Windows & Doors Corp., 446664 (AA)

7-1-04 to 6-30-07, \$619,852.33 Tax, \$62,431.61 Negligence Penalty

For Petitioner:

William Chu, Representative

Elliott Speiser, Attorney

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted to the disallowed claimed and netted nontaxable sales.

Whether adjustments are warranted to the unreported taxable sales.

Whether petitioner was negligent.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Montana Ave Restaurant, Inc., 495272, 527587 (AS)

4-1-05 to 1-11-09, \$120,542.87 Tax, \$0.00 Penalty

4-1-05 to 1-11-09, \$2,925 Claim for Refund

For Petitioner/Claimant:

Jack A. Srebnik, Taxpayer

Leonard G. Cruz, Attorney

For Sales and Use Tax Department:

Erin Dendorfer, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is liable as a successor for the unpaid liabilities of 17th Street Café, Inc.

Whether the claim for refund should be granted.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Richard Festo Bwogi, 514577 (AS)

1-1-05 to 12-31-05, \$2,030.40 Tax, \$870.18 Negligence Penalty, \$870.18 Finality Penalty

For Taxpayer:

Richard F. Bwogi, Taxpayer

For Sales and Use Tax Department:

Marc Alviso, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted to the amount of unreported taxable sales.

Whether taxpayer was negligent.

Whether relief of the finality penalty is warranted.

Whether relief of interest is warranted.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 1:00 p.m. and reconvened at 2:10 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Note: These minutes are not final until Board approved.

Wednesday, February 27, 2013

Life Care Home Health & Medical Supplies, Inc., 495335 (AS)

7-1-05 to 6-30-08, \$50,270.13 Tax, \$5,027.04 Negligence Penalty

For Petitioner:

Shawn Naim, Taxpayer

Joseph Boodaie, Representative

For Sales and Use Tax Department:

Marc Alviso, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted to the audited amount of unreported taxable sales.

Whether relief under Revenue and Taxation Code section 6596 is warranted.

Whether petitioner was negligent.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

AF Services, LLC, 527382, 577082 (AS)

10-1-05 to 12-31-07, \$91,416.00 Claim for Refund

For Taxpayer/Claimant:

Ferdinand Alfajora, Representative

For Sales and Use Tax Department:

Erin Dendorfer, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether taxpayer filed a timely claim for refund.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD FEBRUARY 27, 2013

Rafael Wholesale & Distributor, Inc., 530276 (AA)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Benalex Windows & Doors Corp., 446664 (AA)

Final Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

Montana Ave Restaurant, Inc., 495272, 527587 (AS)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Wednesday, February 27, 2013

Jerry Pena, 478061 (EH)

1-1-05 to 9-30-08, \$51,673.11 Tax, \$5,167.31 Negligence Penalty

For Petitioner: Waved Appearance

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted to the unreported taxable sales.

Whether petitioner was negligent.

Deborah Cumins, Business Tax Specialist III, Appeals Division, Legal Department, advised of the revised recommendation of the Appeals Division to reduce the measure of tax by approximately \$13,095 for an inventory adjustment to use the cost of goods sold rather than purchases.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined in accordance with the revised recommendation of the Appeals Division.

Deanna Robinson Interiors, Inc., 519485 (EA)

4-1-05 to 3-31-08, \$0.00 Tax, \$21,929.47 Negligence Penalty

For Petitioner: Waived Appearance

For Sales and Use Tax Department: Marc Alviso, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner was negligent.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Richard Festo Bwogi, 514577 (AS)

Final Action: Upon motion of Ms. Steel, seconded by Mr. Runner and duly carried, Mr. Horton, Ms. Steel and Mr. Runner voting yes, Ms. Yee and Ms. Mandel voting no, the Board ordered that the finality penalty be abated if the tax due is paid in full within 30 days of the notice of the Board's decision, that the negligence penalty be abated, and that otherwise no further adjustment be made in the administrative protest as recommended by the Appeals Division.

Life Care Home Health & Medical Supplies, Inc., 495335 (AS)

Final Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board rescinded its prior vote.

Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Wednesday, February 27, 2013

AF Services, LLC, 527382, 577082 (AS)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that no adjustment be made in the administrative protest and that the claim for refund be denied as recommended by the Appeals Division.

Ms. Steel stated for the record that she would have supported relief of the finality penalty if not for the statute of limitation.

The Board recessed at 3:44 p.m.

The foregoing minutes are adopted by the Board on September 10, 2013.

Note: The following matters were removed from the calendar prior to the meeting: *Edward Louis Kowski, 475346 (EA)*; and, *Safwat Tawadros Salib and Wafaa Salib, 534396 (EH)*.

Thursday, February 28, 2013

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:44 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

2011/2012 EMPLOYEE RECOGNITION AWARD PROGRAM

Mr. Horton made introductory remarks regarding the Board of Equalization's *2011/2012 Employee Recognition Award Program*. The Members thanked recipients from the Southern California and Out of State District Offices for their dedication and commitment to the organization. They congratulated recipients for their outstanding job performances and for being exceptional people who have done an exceptional job for the State of California. Cristina Herrera, Staff Services Manager III, Executive Projects & Services Section, External Affairs Department, read the names of the award recipients and their achievements into the record.

The Board recessed at 10:17 a.m. and reconvened at 10:45 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

Bill Benson, Acting Chief, Research and Statistics Section, Legislative and Research Division, presented staff's recommendation for the 2013/14 excise tax rate setting (fuel tax swap), which was deferred from February 26, 2013 for separate discussion.

At Ms. Yee's request, the Board directed staff to educate the public regarding the structure of the price, including turning the chart of data that was provided to the Members into a visual tool.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board adopted the 2013/14 excise tax rate (fuel tax swap) as recommended by staff ([Exhibit 2.9](#)).

Exhibits to these minutes are incorporated by reference.

SALES AND USE TAX APPEALS HEARING

Tri-Signal Integration, Inc., 384478 (AC)

1-1-03 to 6-30-06, \$0.00 Tax, \$106,006.29 Negligence Penalty, \$15,934.39 Failure to File Penalty

For Petitioner:

Robert McKibben, Representative
Dennis Furden, Representative

For Sales and Use Tax Department:

Marc Alviso, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner was negligent.

Note: These minutes are not final until Board approved.

Thursday, February 28, 2013

Whether relief of the failure to file penalties for 3Q05 and 4Q05 is warranted.

Whether relief of interest is warranted.

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 12:50 p.m. and reconvened at 12:58 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD FEBRUARY 28, 2013

Francis Stephan Ghosal, 445460, 464724, 468127 (FH)

1-1-05 to 3-31-05, \$10,565.97 Tax, \$1,056.60 Negligence Penalty

4-1-05 to 6-30-05, \$8,243.24 Tax, \$824.33 Negligence Penalty

7-1-05 to 12-31-07, \$103,698.95 Tax, \$10,369.89 Negligence Penalty

For Petitioner: No Appearance

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether further adjustments to the audited understatement of taxable sales are warranted.

Whether the Department timely issued the notices of determination for the first quarter 2005 (1Q05) and 2Q05.

Whether petitioner was negligent.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Tri-Signal Integration, Inc., 384478 (AC)

Final Action: Mr. Runner moved to abate the interest in accordance with Revenue and Taxation Code section 6593.5, and abate the negligence and failure to file penalties. The motion was seconded by Ms. Steel but no vote was taken.

Mr. Runner moved to abate the interest in accordance with Revenue and Taxation Code section 6593.5. The motion was seconded by Ms. Steel but failed to carry, Ms. Steel and Mr. Runner voting yes, Mr. Horton, Ms. Yee and Ms. Mandel voting no.

Upon motion of Mr. Runner, seconded by Ms. Steel and duly carried, Mr. Horton, Ms. Steel and Mr. Runner voting yes, Ms. Yee and Ms. Mandel voting no, the Board ordered that the negligence penalty be abated.

Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the remaining issues of the petition be redetermined as recommended by the Appeals Division.

Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the matter not be held in abeyance pending the adoption of a summary decision for publication.

Thursday, February 28, 2013

T & M Steel Services, Inc., 530730 (EH)

10-1-05 to 9-30-08, \$62,894.47 Tax, \$6,289.45 Finality Penalty

For Taxpayer: Waived Appearance

For Sales and Use Tax Department: Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether adjustments are warranted to the amount of disallowed claimed nontaxable labor.

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that no adjustment be made in the administrative protest as recommended by the Appeals Division.

Rafael Navarro Martinez, 587802 (AP)

7-1-07 to 6-30-10, \$21,281.99 Tax, 2,128.24 Negligence Penalty, \$1,928.20 Finality Penalty

For Taxpayer: Waived Appearance

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether any adjustments are warranted to the amount of unreported taxable sales.

Whether taxpayer was negligent.

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that no adjustment be made in the administrative protest as recommended by the Appeals Division.

The Board recessed at 1:15 p.m. and reconvened at 1:18 p.m. with Mr. Horton, Ms. Steel, Mr. Runner and Ms. Mandel present.

SPECIAL TAXES APPEALS HEARING

Loh Sun International, Inc., Kent La, Nancy La and John La, 480987, 480989, 506428 (STF)

1-1-01 to 6-30-03, \$2,049,540.00 Tax, \$512,385.00 Fraud Penalty

7-1-03 to 7-31-03, \$60,117.00 Tax, \$15,029.25 Fraud Penalty

7-1-03 to 7-31-03, \$133,110.00 Tax, \$33,277.50 Fraud Penalty

For Petitioners: John La, Taxpayer

Nancy La, Taxpayer

For Property and Special Taxes Department: Pamela Mash, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether Loh Sun International, Inc., Kent La, Nancy La, and John La operated as a partnership liable for unreported distributions of cigarettes in California.

Whether adjustments are warranted to the amounts of unreported distributions.

Whether ISOD has supported fraud by clear and convincing evidence.

Action: Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Mr. Runner and Ms. Mandel voting yes, Ms. Yee absent, the Board ordered that the petition be submitted for decision.

Thursday, February 28, 2013

**FINAL ACTION ON SPECIAL TAXES APPEALS HEARING HELD
FEBRUARY 28, 2013**

Loh Sun International, Inc., Kent La, Nancy La and John La, 480987, 480989, 506428 (STF)

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and duly carried, Mr. Horton, Mr. Runner and Ms. Mandel voting yes, Ms. Steel voting no, Ms. Yee absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Upon motion of Ms. Mandel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Mr. Runner and Ms. Mandel voting yes, Ms. Yee absent, the Board ordered that the matter not be held in abeyance pending the adoption of a summary decision for publication.

The Board adjourned at 2:00 p.m.

The foregoing minutes are adopted by the Board on September 10, 2013.

Note: The following matter was removed from the calendar prior to the meeting: *Stephan Sardaryan, 533112, 613435 (AS).*